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No. 139

In the Supreme Court of the United States

OCTOBER TERM, 1952

EDWARD J. SHAUGHNESSY, DISTRICT DIRECTOR OF IMMIGRATION AND NATURALIZATION, PETITIONER

v.

UNITED STATES OF AMERICA, EX REL. IGNATZ MEZEI

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

BRIEF FOR THE PETITIONER

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ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

BRIEF FOR THE PETITIONER

The opinions of the Court of Appeals (R. 29–37) are reported at 195 F. 2d 964. The opinion of the District Court (R. 19–25) is reported at 101 F. Supp. 66.

JURISDICTION

The judgment of the Court of Appeals was entered on March 20, 1952 (R. 38–39). The petition for a writ of certiorari was filed on June 18, 1952,

and was granted on October 13, 1952 (R. 41). The jurisdiction of this Court is invoked under 28 U. S. C. 1254 (1).

QUESTION PRESENTED

Whether an alien, excluded from admission to the United States on security grounds, may be temporarily admitted by the courts for the reason that, since no other country has been found which is willing to accept him, his continued exclusion amounts to an unlawful detention.

STATUTES AND REGULATIONS INVOLVED

The pertinent statutes and regulations are set forth in the Appendix, *infra*, pp. 39–51.

STATEMENT

In October, 1951, the respondent, an alien, filed a petition for a writ of habeas corpus in the United States District Court for the Southern District of New York, seeking his release on the ground that he had been detained on Ellis Island since December, 1950, and that there was no place to which he could be deported (R. 2–5).

From the petition, return, and opinion of the District Court, the following facts appear:

Respondent is an alien of uncertain antecedents whose parents were Hungarian or Roumanian (R. 20) but who claims to have been born in Gibraltar (R. 2). He resided in the United

States from 1923 to 1948 (R. 2, 20).[1] In 1948 he left the United States, allegedly to visit his dying mother in Roumania, but never reached that country, because he was denied permission to enter (R. 2). He remained in Hungary for 19 months (R. 2).

Early in 1950, respondent left Hungary after obtaining an immigration visa for entry into the United States as an immigrant (R. 2).[2] However, upon his arrival at New York, February 9, 1950, he was ordered temporarily excluded by an immigration inspector pursuant to the provisions of the Passport Act as amended (22 U. S. C. 223) and 8 C. F. R. 175.57 (R. 3, 5). Pending disposition of his case he was removed to Ellis Island. After reviewing the evidence, the Attorney General on May 10, 1950, ordered that the temporary exclusion be made permanent without a hearing

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[1] In his petition below, respondent stated that he had been admitted for permanent residence (R. 2), but the District Court noted that the Government alleged that he had never been admitted for permanent residence (R. 20). At a hearing on the conditions of bail on remand of the cause pursuant to the mandate of the Court of Appeals, respondent admitted that he had not legally entered the United States.

[2] Respondent alleged that he is married to an American citizen (R. 2), but did not state, as the Immigration Service files show, that the marriage was entered into in Hungary in 1949, when he sought to return to the United States. Moreover the court below is in error in stating that respondent has American children. On the hearing on the remand, he admitted that he has none. According to the Immigration Service files, respondent's wife has four children by a previous marriage, the youngest of whom is 36 years old.

before a Board of Special Inquiry, on the basis of evidence of a confidential nature, the disclosure of which would be prejudicial to the public interest (R. 3, 5). That determination under 22 U. S. C. 223 and 8 C. F. R. 175.57 was based on a finding that respondent's entry would be prejudicial to the public interest for security reasons (R. 6).

Efforts to remove the respondent from Ellis Island have thus far been unsuccessful. France has twice turned respondent back from its borders, taking the position that he had merely embarked there and refusing to accept him unless there was some assurance that he would be received in another country (R. 3, 10). On one of the trips to France, an effort was made to land respondent in the United Kingdom, but the British authorities likewise refused to take him, presumably because he did not appear to be a British citizen (R. 10, 11). The Immigration and Naturalization Service has sought to obtain travel documents on respondent's behalf from Hungary, but thus far the Hungarian government has not announced any decision on such application (R. 7–8). Respondent also has applied unsuccessfully for entry into 12 Latin American countries (R. 12–17), but alleges no effort on his own part to secure permission to enter Roumania or Hungary. After one of respondent's petitions for habeas corpus had been denied, in June, 1951, respondent told an officer of the Immigration

Service that he intended to make no further effort to depart from the United States (R. 7).

In the meantime respondent has been housed and fed at Ellis Island. He has asserted that he was being unlawfully confined and has sought relief in the courts. Three writs of habeas corpus were dismissed and a petition for a fourth writ was denied, all by the United States District Court for the Southern District of New York (R. 4). However, on October 22, 1951, a fifth habeas corpus proceeding was commenced and a writ was issued (R. 1–2).

After hearing, Judge Irving R. Kaufman held on November 9, 1951, that the respondent's "detention" apparently had been excessively prolonged and that the writ of habeas corpus would be sustained unless the Government permitted the court to examine the evidence against respondent *in camera* (R. 24–26). This the Government declined to do. On December 14, 1951, Judge Kaufman signed a final order sustaining the writ of habeas corpus and directing that respondent be discharged on parole under certain conditions, including requirements that he report regularly and furnish a bond in the sum of $5,000 (R. 26–27).

On appeal, the United States Court of Appeals for the Second Circuit affirmed Judge Kaufman's order, holding that respondent was entitled to release because his "detention" had been excessively prolonged. It directed a reconsideration of the

terms under which release was to be authorized (R. 35–36).[3] In his dissenting opinion, Judge Learned Hand took the position that respondent, as an applicant for entry into the United States, could claim no constitutional rights and could not compel the United States to receive him; that his sojourn ashore, instead of being prevented from leaving the vessel on which he arrived, was merely a privilege granted him which conferred no status; and that the court had no authority to permit the entry of an alien whom the Attorney General had barred as potentially dangerous (R. 36–37).

SUMMARY OF ARGUMENT

I

Although this proceeding arises on a petition for habeas corpus, it actually involves the right of an alien to temporary entry into the United States in the face of a determination by the Attorney General that his entry would impair the public interest. The order of the district court does not merely grant the respondent his freedom; it gives him a privilege he never possessed.

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[3] In conformity with the direction of the Court of Appeals, Judge Kaufman on May 2, 1952, issued a modified order which reduced the bail to the sum of $3,000 and permitted respondent to travel and to reside in Buffalo, New York. Respondent has posted bail and has been released under the court's order.

The exclusion order here involved was issued under the Passport Act of 1918. 22 U. S. C. 223; Appendix, *infra*, p. 39. The respondent had asked for entry into the United States and had been denied that privilege by the Attorney General without a hearing on the basis of a finding that disclosure of the confidential information underlying the order of exclusion would be prejudicial to the public interest. This type of proceeding is to be distinguished from one in which an alien within our borders is apprehended and subjected to a proceeding looking toward deportation.

Congress has carefully distinguished between the two types of proceeding. The exclusion proceeding is summary and direct; it may be completed without a hearing. The deportation proceeding must include a hearing; suspension of the order in appropriate cases is provided for; and the other aspects of deportation are spelled out. The courts, too, have recognized the distinction between the two types of cases. A comparison of *Nishimura Ekiu* v. *United States*, 142 U. S. 651, with *The Japanese Immigrant Case*, 189 U. S. 86, in the early days of our immigration law, or of *Knauff* v. *Shaughnessy*, 338 U. S. 537, with *Wong Yang Sung* v. *McGrath*, 339 U. S. 33, in the last few years, makes this distinction clear. The alien has only such rights as Congress sees fit to grant in exclusion proceedings; he is fully protected in deportation.

Thus it is clear that an exclusion case is not transformed into a deportation case merely because the alien has been housed on Ellis Island. In law he is still deemed at the border.

C. THE REAL ISSUE RAISED IN THIS PROCEEDING IS THE RESPONDENT'S RIGHT TO A TEMPORARY ENTRY AS AGAINST CONTINUED EXCLUSION

The restraints placed on the respondent arise from the circumstance that at the same time that the United States has refused him admission, the country from which he came and others to which he has applied for admission, have refused to take him.[8] Thus, for the present at least, his liberty is restrained and he must remain on Ellis Island. Such restraint has been held a sufficient basis for a petition for habeas corpus. *Chin Yow* v. *United States*, 208 U. S. 8.

Nevertheless, it is not the purpose of the petitioner to confine the respondent; the Government's only intent is to continue to bar his entry into the United States in accordance with the order of the Attorney General. As the return in this case stated, "The relator is not being detained in the usual sense but is in custody solely to prevent him from gaining entry to the United States in violation of law. He is free to depart from the United States to any country of his own choice" (R. 7). The

[8] Except for the fact that the United States is providing the respondent with shelter and food, it is in a sense no more restraining his movement than are France and England.

United States does not want the respondent to be available for any purpose, does not care when he goes, how he goes, or where he goes, as long as he goes east rather than west. On the other hand, the result of the district court's order is not merely to relieve the respondent of restraint but is also to effect his entrance into the United States. The court did not restore him to the position he was in before he applied for entrance, for he was then outside the United States; rather, at least temporarily, it granted him the privilege which he had been denied by the order of the Attorney General, namely, admittance to this country.

The distinction between this situation and that in a deportation proceeding is more than a formal one; certain results inevitably flow from it. Thus, if the court below is correct in determining that an alien who can find no country to give him refuge is entitled to at least temporary admittance here, it follows that the more undesirable an alien is, the better are his chances of admission, since the less likely he is to find other countries willing to accept him. In fact, if he is undesirable enough, he may attain what amounts to permanent residence in this country since no other nation will ever take him. Or, looked at from another angle, a foreign nation would be able to overcome our policy of excluding its agents by the simple

procedure of shipping them to our shores and then shutting the door on their return.

The nature of the restraint in this case is also significant in determining the length of time which it may be permitted to continue. Some cases dealing with deportation have established the principle that an alien may not be confined indefinitely while the Immigration Service seeks to carry out an order of expulsion. *Janavaris* v. *Nicolls*, 47 F. Supp. 201 (D. Mass.); *United States ex rel. Consola* v. *Karnuth*, 63 F. Supp. 727 (W. D. N. Y.).[9] Moreover, recent amendments to the immigration law, provided in the Internal Security Act of 1950, limit the period of confinement pending deportation to six months: 8 U. S. C., Supp. V, 156. Such limitations are appropriate because confinement in deportation cases is merely a step in aid of expulsion and, if too long continued, the confinement takes the place of the deportation which was ordered. However, such reasoning has no application to a restraint the purpose of which is purely to exclude, for there the exclusion is the ultimate step authorized by Congress and it must be continued so long as the exclusion order remains in effect. In this case the order of exclusion under the Passport Act must be considered to continue, unless revoked, until the end

[9] When this theory is carried over to exclusion cases, as it was in *Staniszewski* v. *Watkins*, 80 F. Supp. 132 (S. D. N. Y.), we believe it is erroneously applied.

of the emergency proclaimed by the President on December 16, 1950. Proclamation 2914, 3 C. F. R. (1950 Supp.) 71. At the end of the emergency the respondent may, of course, reapply for admission.

The remainder of the argument is almost entirely dependent upon the analysis made above. If it is clearly understood that the confinement in this case is merely the result of a combination of a denial of entry by the United States and a refusal by other countries to accept the respondent, then it becomes equally clear that the relief sought is, in effect, that the Government should cease to carry out its exclusion order. But, as we shall point out in the subsequent portions of this brief, Congress not only authorized, but required, the continuance of the exclusion, and the respondent has no statutory or constitutional right which is impaired thereby.

II

THE CONTINUED EXCLUSION OF THE RESPONDENT, PENDING THE FINDING OF A PLACE OF REFUGE, IS NOT ONLY AUTHORIZED BUT REQUIRED BY THE IMMIGRATION LAW

The decision of the court below rests in part on the view that Congress did not grant, or intend to grant, authority to the Attorney General to continue an excluded alien in detention under the

circumstances here present. (R. 32.)[10] An analysis of the statutory scheme reveals, however, that Congress has not only bestowed such power, but has also commanded its exercise in a case of this sort.

The structure of the immigration laws is as follows: Section 3 of the Immigration Act of 1917 provides for the exclusion of certain classes of aliens (8 U. S. C. 136). This list has been supplemented from time to time (8 U. S. C. 137), the most recent additions being made by the Internal Security Act of 1950 (64 Stat. 1006). In addition, the Passport Act of 1918, as amended (22 U. S. C. 223, Appendix, *infra*, p. 39) authorizes the President to impose added restrictions on the entrance of aliens during the present emergency.[11] Both the Internal Security Act (8 U. S. C., Supp. V, 137–4) and the regulations under the Passport Act (8 C. F. R. (1949 ed.) 175.57) provide for the exclusion of an alien without a hearing, where disclosure of confidential information would prejudice the public interest. As pointed out in the

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[10] The court's reference to 8 U. S. C., Supp. V, 137–4 (R. 32) is inaccurate, since the exclusion here was effected under 22 U. S. C. 223. As pointed out above, the six-months' limitation on imprisonment under the deportation provisions emphasizes the distinction between deportation and exclusion.

[11] The visa carried by the respondent gave him no right of admission which could not be taken away at the time of arrival. (8 U. S. C. 202 (g); *Chang Chan* v. *Nagle*, 268 U. S. 346, 352; *Sohaiby* v. *Savoretti*, 195 F. 2d 139, 140 (C. A. 5)).

The only reason that this case carries any of the color of the deportation cases is that instead of being sent back on the vessel on which he arrived, the respondent was granted temporary refuge on Ellis Island. Under the specific provisions of the immigration law (8 U. S. C. 151, Appendix, *infra*, pp. 47–48) and the decided cases (*Kaplan* v. *Tod*, 267 U. S. 228; *Chin Yow* v. *United States*, 208 U. S. 8; *United States* v. *Ju Toy*, 198 U. S. 253), this makes no difference in respondent's rights. But the combination of his being on Ellis Island, plus the refusal to permit him to land, plus the refusal of other countries to accept him, results in a present confinement. The fact that he was given the privilege of leaving the vessel, which is responsible for the present detention, gives him no legal rights he did not have before.

Although the appropriateness of habeas corpus as a remedy in this situation is not contested, the nature and purpose of the restraint has certain consequences. For one thing, to grant habeas corpus not only relieves the respondent of restraint, it also grants him temporary entry into the United States over the order of the Attorney General. Moreover, it leads to the absurd result that the more undesirable an alien is, the better are his chances of forcing an entry by way of court action, since his very undesirability lessens his chance of finding refuge elsewhere and increases the length of his detention. In fact, if

he is undesirable enough it may be impossible ever to find any other country to take him and his entry may become permanent. It is the position of the United States that since the restraint is not incidental to an order but is, itself, the effectuation of the exclusion order, there is no limit to its continuance other than the statutory time limit on the authority of the Attorney General to exclude him.

II

The decision of the court below appears to be based, in part at least, on the theory that Congress did not grant the Executive authority to detain an alien under the circumstances of this case. What Congress has done is not only to authorize, but to direct, the exclusion of aliens whose presence would be detrimental to the public interest. It was originally contemplated that such aliens would be promptly returned on the vessels which brought them, and the permission to stay at Ellis Island is merely an amelioration of the summary remedy in order that more time can be given to the consideration of the cases. But the so-called detention is still merely a continuation of the exclusion which is specifically authorized by Congress. Although the statutes permit the release on bail of aliens involved in deportation proceedings, and direct this relief after six months if deportation is not completed, there is no com-

parable provision in connection with exclusion. Specifically, the Attorney General is authorized to permit temporary entry only if the alien is a necessary witness on behalf of the United States in a prosecution, a circumstance which is not even suggested in the present case.

The authority of the Attorney General is, therefore, to continue the exclusion of the respondent for the duration of the present emergency, and his detention must last throughout that period unless he finds another country to grant him refuge or unless the exclusion order is revoked.

III

The order excluding the respondent from entry is not itself directly under attack in this proceeding, but since the release of the respondent on habeas corpus grants him a temporary entry into the country, the result of the order is a reversal of the Attorney General's determination that the respondent should be excluded. It is well-established that it is not the function of the courts in dealing with petitions for habeas corpus in immigration cases to review the exercise of a statutory authority by the executive. *Polymeris* v. *Trudell*, 284 U. S. 279; *Knauf* v. *Shaughnessy*, 338 U. S. 537.

The court below went even further afield when it sought to justify its actions on the basis of the assumption that the welfare of the nation could

be as well protected by surveillance and criminal prosecution as by continued exclusion. Certainly, the choice of the appropriate remedy was for Congress and not for the courts. *United States* v. *Curtiss-Wright Corporation*, 299 U. S. 304.

And finally, there was no reason to interfere in the proceeding in order to protect any constitutional rights vested in the respondent. From the earliest immigration cases to the latest, it has consistently been held that no alien has any constitutional right to entry into the United States. The *Chinese Exclusion Case*, 130 U. S. 581; *Knauff* v. *Shaughnessy*, 338 U. S. 537. It is inconceivable that the refusal of other countries to accept an alien increases his right to entry here. Rather, his entire rights are those granted him by Congress, and due process is provided by conforming to the procedures laid down in the statutes. Therefore, this alien seeking entry into the United States has no constitutional right to force his way in over the exclusion order of the Attorney General.

ARGUMENT

I

THE LEGALITY OF THE RESTRAINT IMPOSED ON THE RESPONDENT MUST BE DETERMINED IN LIGHT OF THE FACT THAT IT RESULTS FROM THE CONTINUED EXCLUSION OF THE RESPONDENT RATHER THAN FROM CONFINEMENT IN ORDER TO EFFECTUATE SOME OTHER GOVERNMENTAL ACTION

A. BOTH THE STATUTORY PROCEDURES AND THE ALIEN'S CONSTITUTIONAL RIGHTS ARE DETERMINED BY THE FACT THAT HE IS BEING PREVENTED FROM ENTERING RATHER THAN BEING DEPORTED AFTER ENTRY

Both Congress and the courts have long recognized the very real distinction between exclusion and deportation. In the case of the former, aliens outside the United States apply for admission at our frontiers, and the order involved is one either granting or refusing them permission to enter. In the case of deportation, on the other hand, an alien who is actually in this country is apprehended and, if found deportable, ordered expelled to some foreign country. The difference is between merely preventing entrance and actual expulsion.

The present case is one of exclusion. It arises under the so-called Passport Act, as amended (22 U. S. C. 223, Appendix, *infra*, p. 39), under which, during the present emergency, the President, and, by delegation, the Attorney General, is authorized to prevent the entry of aliens whose "entry would be prejudicial to the interests of the United States." Presidential Proclamation No.

2523, 6 F. R. 5821; Presidential Proclamation No. 2850, 14 F. R. 5173, Appendix, *infra*, pp. 40–43. Under regulations issued by the Secretary of State, with the concurrence of the Attorney General, the entry of various classes of aliens is designated as prejudicial to the interests of the United States (8 C. F. R. 175.53, Appendix, *infra*, pp. 43–45), and the Attorney General is authorized to exclude without a hearing when the exclusion is based on confidential information the disclosure of which would be prejudicial to the public interest (8 C. F. R. 175.57, Appendix, *infra*, p. 46). In this case the Attorney General made the necessary determination and ordered the respondent excluded (R. 5).

The procedure followed in this case is authorized with respect to aliens seeking to enter the United States; it has no relation to proceedings against aliens who are present within our borders and whose continued presence is found undesirable. The provisions of the Passport Act are to

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[4] Although the proceeding in this case took place under the Passport Act, in other cases and times exclusion can, of course, be effected under the immigration law itself, specifically, under 8 U. S. C. 136, 137, 151–154. And under 8 U. S. C., Supp. V, 137–4 exclusion of subversive aliens may be carried out without a hearing if disclosure of confidential information would be required to the prejudice of the interests of the United States. The Immigration and Nationality Act of 1952 (Public Law 414, 82d Cong., 2d sess., 66 Stat. 163) continues the provisions of the Passport Act in Section 215 and of the present Immigration Law in Section 235 (c).

be contrasted with the provisions of the immigration law dealing with deportation. 8 U. S. C. 155–157. Under those provisions an alien is entitled to a hearing; the order of deportation may be suspended in appropriate cases; the places to which the alien may be deported are prescribed; and the length of time that he may be held in detention until deportation can be completed is limited. None of these provisions applies to exclusion.

The difference in the two classes of cases is reflected not only in their legislative treatment, but also by the rights which the courts have recognized as inhering in the aliens involved. Thus, it has long been held that an alien is entitled to a fair hearing before deportation. *Fong Yue Ting* v. *United States*, 149 U. S. 698; *The Japanese Immigrant Case*, 189 U. S. 86; *Wong Yang Sung* v. *McGrath*, 339 U. S. 33. On the other hand, an alien applying for entry may be excluded under such procedures as Congress may have adopted as appropriate. *Nishimura Ekiu* v. *United States*, 142 U. S. 651; *The Chinese Exclusion Case*, 130 U. S. 581; *Knauff* v. *Shaughnessy*, 338 U. S. 537.[3] The court below pointed out in

[3] The well-established proposition, that an alien who voluntarily leaves the United States, even though resident here, is, upon his return, subject to the same rules of exclusion as on initial entry, has not been questioned in this case. See, *e. g.*, *Lem Moon Sing* v. *United States*, 158 U. S. 538, 547–548; *Hansen* v. *Haff*, 291 U. S. 559, 561–562; *United*

some detail other constitutional rights including the privilege against self-incrimination, reasonable bail, protection from cruel or unusual punishment, freedom of speech, and freedom from unreasonable searches and seizures, accorded to aliens in various deportation cases (R. 32). What the court failed to note was that these rights were accorded only in deportation cases, whereas in exclusion proceedings this Court has stated in *Knauff* v. *Shaughnessy*, 338 U. S. 537, at 544: "Whatever the procedure authorized by Congress is, it is due process as far as an alien denied entry is concerned."

States ex rel. Volpe v. *Smith*, 289 U. S. 422, 425; *United States ex rel. Stapf* v. *Corsi*, 287 U. S. 129, 132; *Lewis* v. *Frick*, 233 U. S. 291, 297; *United States ex rel. Kwong Hai Chew* v. *Colding, et al.*, 192 F. 2d 1009 (C. A. 2), pending on writ of certiorari, No. 17, this Term.

This brief was completed before a decision had been announced in *Kwong Hai Chew* v. *Colding*, No. 17, this Term, which was argued before the Court on October 17, 1952. If this Court should decide in that case that the petitioner there was entitled to a hearing on grounds applicable to the respondent in the present case, then the exclusion order here involved would have to be reconsidered on the basis of a hearing. The purpose of the respondent's continued detention would then shift from the continuation of an exclusion order to barring admittance during the pendency of the exclusion proceeding.

B. THE FACT THAT IN THIS CASE THE RESPONDENT HAD BEEN GRANTED A HAVEN ON ELLIS ISLAND, RATHER THAN BEING FORCED TO REMAIN ABOARD THE VESSEL ON WHICH HE ARRIVED, GAVE HIM NO ADDITIONAL STATUTORY OR CONSTITUTIONAL RIGHTS

Practical considerations have compelled a distinction between aliens applying for admission at our land borders and those seeking entry at our seaports. An alien applying from contiguous territory at a land border port presents no practical difficulty. If his right to enter is questioned, he usually returns to his home and comes back for any further required or authorized process. He thus remains physically outside the United States until a final determination is made. An excluding decision in his case is self-executing and requires no further implementation; he is simply not admitted. And the courts will not interfere. *Polymeris* v. *Trudell*, 284 U. S. 279.

Aliens who, like the respondent, are brought to the United States by vessel and apply for admission at seaports present another problem. In the earliest days of immigration enforcement, such aliens whose admissibility was questioned were detained on board the vessel while their right to land was being determined.[6] Experience soon demonstrated, however, that detention on board the vessel resulted in unnecessary hardship. At seaports, arriving vessels usually operate under

[6] A similar process still obtains in regard to alien seamen. 8 C. F. R. 120.34 and 120.35.

tight sailing schedules. A requirement that such vessels remain in port until doubtful cases are finally decided would be very costly to the transportation lines. Moreover, the need for haste in such cases might preclude careful consideration of the alien's claims. Consequently, for many years the immigration statutes have permitted temporary removal of the alien to temporary quarters ashore while his right to enter is being adjudicated.

The present statutory provision is found in 8 U. S. C. 151, Appendix, *infra*, pp. 47–48. So far as Congress was concerned, it is clear that Congress intended not to give the alien any of the rights of a person who has been allowed to enter the United States. Specifically, Congress declared that the temporary shelter given the alien "shall not be considered a landing" and shall not relieve the vessel of its obligation to remove the alien if he is ordered excluded.[7]

This Court in a long line of cases has consistently held that an alien's rights are not affected by such temporary arrangements. *Nishimura Ekiu* v. *United States*, 142 U. S. 651; *United States* v. *Ju Toy*, 198 U. S. 253, 263; *Chin Yow* v. *United States*, 208 U. S. 8, 12; *Kaplan* v. *Tod*, 267 U. S. 228, 230; *Knauff* v. *Shaughnessy*, 338 U. S. 537, 543.

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[7] This provision is continued in the Immigration and Nationality Act of 1952 as Section 233. 66 Stat. 197.

And, finally, in *Harisiades* v. *Shaughnessy*, 342 U. S. 580, this Court stated, at 588, that

> It is pertinent to observe that any policy toward aliens is vitally and intricately interwoven with contemporaneous policies in regard to the conduct of foreign relations, the war power, and the maintenance of a republican form of government. Such matters are so exclusively entrusted to the political branches of government as to be largely immune from judicial inquiry or interference.

Although neither the district court nor the court below asserted the specific authority to review political determinations by Congress or the Executive, it is inescapable that that is the true content of their decisions. Thus the first opinion and the intermediate order of the district court were designed to require the disclosure, *in camera* if necessary, of the factual basis for the respondent's exclusion (R. 24–26) in order that the court might determine whether the risk in the particular case supported his continued exclusion.[19] On

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[19] This action appears to be in direct conflict with the views expressed by this Court in *C. & S. Air Lines* v. *Waterman Corp.*, 333 U. S. 103, at 111:

"* * * The President, both as Commander-in-Chief and as the Nation's organ for foreign affairs, has available intelligence services whose reports are not and ought not to be published to the world. It would be intolerable that courts, without the relevant information, should review and perhaps nullify actions of the Executive taken on information properly held secret. Nor can courts sit *in camera* in

failure of the Government to disclose the information, the district court ordered the respondent discharged on bond (R. 26).

Although the majority of the court below professed its adherence to the theory that the Attorney General has power to exclude arriving aliens for security reasons without a hearing, it disparaged and actually defeated the order barring entry in this case. The court seems to have assumed that because the confidential information could not be revealed, it was insubstantial; and it seems to have accepted respondent's self-serving statement that the primary ground for his exclusion was his membership in the International Workers Order (R. 3).[20] It is clear that the court was not in a position to know or evaluate the information on which the exclusion was predicated. Certainly, the court was not justified in assuming that the action was arbitrary.

The court below adverted to the long period of the respondent's prior residence in the United States and the absence of any indication of overt acts of subversion (R. 34). And so the court apparently concluded that the public safety could be sufficiently guarded by keeping the respondent

[20] The Attorney General should not be forced into disclosing confidential facts which should be withheld in the public interest by the fact that an alien makes certain representations as to the basis of his exclusion.

preceding portion of this brief, an alien may be transferred to an immigration facility pending a determination on his application for admittance, but the transfer has no effect on his substantive rights. See pp. 16 to 18 *supra*.

The statutory provision for execution of an order for exclusion is simple and direct. "All aliens brought to this country in violation of law shall be immediately sent back, in accommodations of the same class in which they arrived, to the country whence they respectively came, on the vessels bringing them, unless in the opinion of the Attorney General immediate deportation is not practicable or proper." (8 U. S. C. 154, Appendix, *infra*, pp. 48–51).[12] If the alien has been temporarily removed and detained on shore, the statute makes it unlawful for the carrier to refuse to receive him back on board and provides sanctions for such refusals. The law clearly contemplates that the Attorney General will make the adjudication and that the transportation line will give it effect.

The statute is silent with respect to the situation presented here, where the country from which the

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[12] The provisions of this section are addressed, not to the Government or to the aliens, but to the transportation lines, and are designed to protect excludable aliens from exploitation by transportation lines desirous of obtaining passengers. *United States* v. *Nord Deutscher Lloyd*, 223 U. S. 512, 517; *Ng Lin Chong* v. *McGrath*, decided July 3, 1952 (C. A. D. C.), not yet reported. And see Senate Report No. 352, 64th Congress, 1st Session, on H. R. 10384, which became the Immigration Act of 1917 (p. 13).

respondent came refuses to receive him back.[13] The Act contains no provision for relief of a vessel unable to discharge its duty or its unwelcome passenger. However, Congress certainly did not authorize the Attorney General to grant entry to such an alien and set him at large in the United States, on bond or otherwise. The bail provisions of 8 U. S. C., Supp. V, 156, discussed in *Carlson* v. *Landon*, 342 U. S. 524, are not applicable to exclusion proceedings.[14] The only excluded aliens whom the law specifically permits to be ad-

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[13] *United States ex rel. Consola* v. *Karnuth*, 63 F. Supp. 727, 730 (W. D. N. Y.), and *Bellaskus* v. *Crossman*, 164 F. 2d 412 (C. A. 5), reversed, 335 U. S. 840, cited by respondent as describing the place to which the excluded alien must be sent (Memorandum in Opposition, p. 2), are inapplicable. Those cases dealt with aliens in *expulsion* proceedings and involved 8 U. S. C. 156, which prescribes the countries to which such aliens may be deported. The provisions of this section have no application to an excluded alien, such as respondent. *Wah* v. *Shaughnessy*, 190 F. 2d 488 (C. A. 2).

[14] See *United States ex rel. Chu Leung* v. *Shaughnessy*, 88 F. Supp. 91, 93 (S. D. N. Y.):

"Furthermore, it should be noted that the administrative proceeding in this case was exclusion and not deportation and the statutory authority vested in the Attorney General who in his discretion 'may' grant bail applies only to deportation proceedings."

And see *United States ex rel. Soo Hoo Chew Yee* v. *Shaughnessy*, 104 F. Supp. 425, 427 (S. D. N. Y.):

"But there is no provision for statutory bail under these facts, for the administrative proceeding here was in the nature of exclusion and not deportation. There is no statutory authority vested in the Attorney General or any other executive officer to grant bail in such a proceeding. Such authority applies only to deportation proceedings."

mitted on bond are those whose testimony is necessary on behalf of the United States in certain criminal prosecutions (8 U. S. C. 154, Appendix, *infra*, p. 50). Manifestly, the respondent is not within that class.[15]

In 1950, the Senate Judiciary Committee, after exhaustive investigation of our immigration laws and practices, rejected a proposal that excluded aliens be admitted under bond. The Committee recognized that "to permit them to enter the United States under bond would bring about the very thing that Congress intended should not be done." See Senate Report No. 1515, 81st Congress, 2d Session, pp. 643–644.

Greater discretionary authority will be vested in the Attorney General by Section 212 (d) (5) of the Immigration and Nationality Act, Public Law 414, 82nd Congress, 2d Session, effective December 24, 1952. That provision will authorize the Attorney General to parole an alien applicant into the United States temporarily "for emergent reasons or for reasons deemed strictly in the public interest." The Congressional intent underlying this provision is stated at page 52 of House Report No. 1365, 82nd Congress, 2d Session, on H. R. 5678:

> The Committee believes that the broader discretionary authority is necessary to per-

[15] Comparable provision is made in Section 237. (d) of the Immigration and Nationality Act, Public Law 414, 82nd Congress, 2d Session, effective December 24, 1952.

> mit the Attorney General to parole inadmissible aliens into the United States in emergency cases, such as the case of an alien who requires immediate medical attention before there has been an opportunity for an immigration officer to inspect him, and in cases where it is strictly in the public interest to have an inadmissible alien present in the United States, such as, for instance, a witness or for purposes of prosecution.

Even after this new power becomes effective on December 24, no grounds have been shown which would indicate that the Attorney General would have a factual basis to exercise his authority in this case. No medical emergency is presented and since the Attorney General has found that the respondent's entry would be prejudicial to the interests of the United States, he would scarcely be considered eligible for discretionary relief designed by Congress exclusively for aliens whose entry is deemed necessary in the public interest.

The statutory scheme thus authorizes the Attorney General (1) to exclude certain classes of aliens, (2) to transfer an alien from ship to shore, pending the determination of his admissibility, (3) to return him to the country whence he came if he is found deportable, and (4) to permit his temporary entry only if medical emergency or public interest so requires. That the statute does not specifically provide for continued restraint on

the failure of successive attempts to deport an alien does not preclude such action, since, as pointed out above, there is no confinement as such, but only a continued refusal to permit entry into the United States which, when combined with the refusal of other countries to accept an alien, results in a restraint on his freedom. It was clearly the intention of Congress that aliens such as respondent, who have been properly excluded on security grounds, should not be permitted at large in this country. In refusing entry to the respondent, the Attorney General was merely carrying out this obligation under the law.

After he was excluded from this country, the respondent was returned to the vessel and transported abroad. France and Great Britain refused to receive him and the vessel brought him back to our shores. At that point, the Attorney General had three alternatives. He could have (1) refused to permit him to leave the vessel; (2) permitted him ashore until he could find asylum elsewhere; (3) allowed him to land and go at large under bond. The first alternative was properly rejected as inhumane, since it would have left respondent indefinitely to roam the seas. The third alternative could not be countenanced, since it would fly in the face of the Congressional mandate. The second alternative, which was the course pursued, represents the least undesirable selection in such a Hobson's choice.

The court below formulated its determination that the detention had exceeded the Attorney General's authority by first assuming "the power to hold can never be broader than the power to remove or shut out" (R. 31). Then it went forward to state that continued detention "is justified only as a means necessary to carry out his [respondent's] lawful removal from the country" (R. 32). If this were a deportation proceeding, this latter statement would be sound. But what it overlooks is the power, referred to in the prior statement, to "shut out," which is actually the objective in exclusion proceedings. This is not the type of restraint dealt with in *Janavaris* v. *Nicolls*, 47 F. Supp. 201 (D. Mass.), where the object was to keep the alien available for a hearing on deportation. That restraint is in aid of the power to remove. Here the restraint follows from the shutting out of the alien. The Attorney General has found that respondent's entry would be prejudicial to the public interest (R. 6). So long as that finding is outstanding, the restraint resulting from exclusion cannot be regarded as unreasonably prolonged regardless of how long it continues. See *Ludecke* v. *Watkins*, 335 U. S. 160; *Schwarzkopf* v. *Uhl*, 137 F. 2d 898 (C. A. 2). The mere fact that exclusion has been extended over a protracted period does not in itself warrant the assumption that it

is unreasonable. Thus, an alien enemy interned during time of war could hardly make a tenable complaint that his confinement must be ended because it had extended over a period of months, or even years. And a person barred from his home and usual occupation in a critical war zone likewise could not demand relief merely by invoking the calendar. *Korematsu* v. *United States*, 323 U. S. 214. It is only when confinement is prolonged beyond the needs defined by Congress that the detention of an excluded alien may become unreasonable. And where an alien is ordered excluded for reasons of internal security, pursuant to the mandate of Congress and the President, it cannot be unreasonable to continue his detention for the purpose of debarring him from the United States so long as his entry continues to be a menace to the safety of the United States.

One may reasonably inquire how long the Government proposes to keep the respondent at Ellis Island. The answer is that the mandate of Congress requires that he be barred from entering the United States and thus must remain on Ellis Island until (1) he voluntarily departs to some country of his own selection; or (2) until he is removed by the United States to the country whence he came; or (3) if neither of the first alternatives can be satisfied, until such time as the Attorney General determines that his entry no

longer will imperil the national safety; or (4) until the conclusion of the emergency."

Though the court below assumed that all efforts to bring about the respondent's admission to another country had been exhausted, that is not the case at all. The place to which he could most reasonably expect to return is Hungary, and the record is barren of any suggestion that he has ever applied to that country. Significantly, when he desired to enter Hungary in 1948 he experienced no difficulty in obtaining official approval for admission into that country. He stayed there for nineteen months, from 1948 to 1950, and was married there. Even though the United States has received no answer to its request that Hungary admit him (R. 8), past experience emphasizes the likelihood that respondent might well be found acceptable by Hungary, Roumania or other Iron Curtain countries if he himself made a *bona fide* application for admittance.[16] Cf.

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[16] Poland, for example, has accepted the Greek national who was the subject of *Harisiades* v. *Shaughnessy*, 342 U. S. 580 (New York Times, November 13, 1952, p. 22) as well as Toma Babin, a Yugoslav (New York Times, January 22, 1950, p. 18). Other non-Poles recently received by Poland, according to information from the Immigration and Naturalization Service, include Nicolas Kaloudis (*United States ex rel. Kaloudis* v. *Shaughnessy*, 180 F. 2d 489, C. A. 2) and Theodoros Bafalukos (*United States ex rel. Bafalukos* v. *Murff*, 94 F. Supp. 643, D. Md.). George Pirinsky, a Bulgarian (*United States ex rel. Pirinsky* v. *Shaughnessy*, 177 F. 2d 708, C. A. 2) was deported to his native land (New York Times, August 3, 1951, p. 7). Other European aliens

United States v. *Spector*, 343 U. S. 169. The twelve Latin American countries alleged to have rejected him[17] patently have been marshalled for dramatic effect rather than because of any sincere expectation that they would receive him. Any alien not wanted here could probably find a long list of other countries which would *not* accept him. And, most significantly, respondent has declared that he would "make no further effort to depart from the United States and would do nothing except to attempt to remain in this country" (R. 7). That all doors are closed to respondent is far from definitely established.

But even if it were conceded that respondent's exclusion would continue to the end of the emergency and that during all of that time no foreign country would be willing to accept him, and that he must therefore remain on Ellis Island for the indefinite future, no alternative appears possible. If this situation be considered a hardship, it is a result of the current international situation and does not itself call for extraordinary relief.[18]

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have succeeded in entering various Latin American countries. Ferenc Vajta, a Hungarian (*United States ex rel. Vajta* v. *Shaughnessy*, 179 F. 2d 137, C. A. 2) was deported to Colombia on February 7, 1950.

[17] Even those are not all outright rejections. In some instances the door is left open for further applications (R. 13, 17).

[18] The hardships flowing from enforcement of the immigration laws do not offend the Due Process Clause. *Harisiades* v. *Shaughnessy*, 342 U. S. 580, 590–591. The courts have consistently held that such hardships furnish no war-

Moreover, as Justice Black pointed out in *Korematsu* v. *United States*, 323 U. S. 214, at 219, "hardships are part of war, and war is an aggregation of hardships." This observation is equally applicable to the present period of national peril.

III

THE DISTRICT COURT WAS WITHOUT AUTHORITY TO GRANT TEMPORARY ENTRANCE THROUGH HABEAS CORPUS, SINCE NO STATUTORY OR CONSTITUTIONAL RIGHTS OF THE RESPONDENT HAD BEEN IMPAIRED

A. THE COURT HAD NO AUTHORITY TO REVIEW THE DISCRETION EXERCISED BY THE EXECUTIVE PURSUANT TO CONGRESSIONAL AUTHORITY

Generally speaking, relief through habeas corpus is granted in immigration cases either when the rights of an alien have been impaired through failure to follow the procedures laid down by Congress (*Gegiow* v. *Uhl*, 239 U. S. 3; *Wong Yang Sung* v. *McGrath*, 339 U. S. 33) or because some constitutional right has been violated. As we have pointed out in the preceding point, the

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rant for judicial intervention. *Commissioner of Immigration* v. *Gottlieb*, 265 U. S. 310, 313; *Sohaiby* v. *Savoretti*, 195 F. 2d 139 (C. A. 5); *Soewapadji* v. *Wixon*, 157 F. 2d 289 (C. A. 9), certiorari denied, 329 U. S. 792; *Kobayashi* v. *Carmichael*, 120 F. 2d 752, 753 (C. A. 9); *United States ex. rel. Giacone* v. *Corsi*, 64 F. 2d 18 (C. A. 2); *Todaro* v. *Munster*, 62 F. 2d 963 (C. A. 10), certiorari denied, 289 U. S. 738; *Clark* v. *Orabona*, 59 F. 2d 187 (C. A. 1), certiorari denied, 287 U. S. 629; *United States ex rel. Natali* v. *Day*, 45 F. 2d 112 (C. A. 2); *United States ex rel. Giletti* v. *Commissioner*, 35 F. 2d 687 (C. A. 2).

restraints imposed upon this respondent have not overstepped the statutory authority of the Immigration Service. This being so, the court had no authority to review the exercise of discretion by a coordinate branch of the Government in accordance with the authority granted by Congress. In a very early immigration case, *Nishimura Ekiu* v. *United States*, 142 U. S. 651, this Court stated, at page 660:

> It is not within the province of the judiciary to order that foreigners who have never been naturalized, nor acquired any domicil or residence within the United States, nor even been admitted to the country pursuant to law, shall be permitted to enter, in opposition to the constitutional and lawful measures of the legislative and executive branches of the national government.

And in one of the most recent cases before this Court on the same subject, *Knauff* v. *Shaughnessy*, 338 U. S. 537, 542, 543, this Court stated:

> * * * an alien who seeks admission to this country may not do so under any claim of right. * * *
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> * * * * *
>
> * * * Whatever the rule may be concerning deportation of persons who have gained entry into the United States, it is not within the province of any court, unless expressly authorized by law, to review the determination of the political branch of the Government to exclude a given alien.

under surveillance and prosecuting him for any crimes he might be discovered committing (R. 33–34). But this determination is directly contrary to the policy of Congress, expressed in both the Passport Act and the Immigration law. In both statutes, Congress sought to protect the public safety by the exclusion of aliens rather than through the enforcement of the criminal law. Both statutes entrusted to the Attorney General the authority to carry out this policy. It is not for the courts to grant entry, temporarily or permanently, in derogation of this policy. *Cf. United States* v. *Curtiss-Wright Corp.*, 299 U. S. 304, 319–322.

B. NO CONSTITUTIONAL RIGHT OF THE RESPONDENT HAS BEEN IMPAIRED

Since it appears that the respondent has been deprived of no statutory right and that the court had no jurisdiction to review the exercise of discretion by the Attorney General, the only other possible basis for intervention through habeas corpus would be in order to protect some constitutional right of the alien.

There is one concept in the cases dealing with immigration which is clear beyond dispute; no alien has a constitutional right to enter this country. The United States, acting through Congress and the executive departments, may exclude any

or all aliens, designating those to be turned away in terms of race, activity, character, mentality, prior affiliation, or otherwise, and may admit them on such terms and conditions as it chooses to prescribe. *Harisiades* v. *Shaughnessy,* 342 U. S. 580; *Carlson* v. *Landon,* 342 U. S. 524, 534, 536; *Knauff* v. *Shaughnessy,* 338 U. S. 537; *United States ex rel. Volpe* v. *Smith,* 289 U. S. 422, 425; *Low Wah Suey* v. *Backus,* 225 U. S. 460, 467–468; *Oceanic Navigation Co.* v. *Stranahan,* 214 U. S. 320, 339–340; *Turner* v. *Williams,* 194 U. S. 279, 289–290; *The Japanese Immigrant Case,* 189 U. S. 86, 97; *Wong Wing* v. *United States,* 163 U. S. 228, 237; *Fong Yue Ting* v. *United States,* 149 U. S. 698, 704–713; *Nishimura Ekiu* v. *United States,* 142 U. S. 651, 659; *The Chinese Exclusion Case,* 130 U. S. 581, 603–604.

Since the only restraint imposed on the alien in this case was a prohibition against his entering this country, no constitutional right of the alien was denied him. On the other hand, the orders of the courts below gave to the alien a privilege which this Court has repeatedly held lies within the exclusive authority of Congress and the Executive to grant or withhold, thereby disregarding over sixty years of constitutional law.

CONCLUSION

For the foregoing reasons, it is respectfully submitted that the judgment of the court below should be reversed.

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DECEMBER 1952.

APPENDIX

1. Section 1 of the Act of May 22, 1918, c. 81, 40 Stat. 559, as amended by the Act of June 21, 1941, c. 210, § 1, 55 Stat. 252 (22 U. S. C. 223), provides in pertinent part:

> When the United States is at war or during the existence of the national emergency proclaimed by the President on May 27, 1941, or as to aliens whenever there exists a state of war between, or among, two or more states, and the President shall find that the interests of the United States require that restrictions and prohibitions in addition to those provided otherwise than by this Act be imposed upon the departure of persons from and their entry into the United States, and shall make public proclamation thereof, it shall, until otherwise ordered by the President or Congress, be unlawful—
>
> (a) For any alien to depart from or enter or attempt to depart from or enter the United States except under such reasonable rules, regulations, and orders, and subject to such limitations and exceptions as the President shall prescribe:
>
> * * * * *

(This Act has been continued in effect by Public Laws 313, 368, 393, and 450, 82d Cong., 2d Sess., 66 Stat. 54, 96, 137, and 330.)

2. Presidential Proclamation No. 2523 (6 F. R. 5821), as originally promulgated on November 14, 1941, provided in pertinent part:

> Whereas, the act of Congress approved on May 22, 1918 (40 Stat. 559), as amended by the act of Congress approved on June 21, 1941 (* * * 55 Stat. 252) vests authority in me to impose restrictions and prohibitions in addition to those otherwise provided by law upon the departure of persons from and their entry into the United States when the United States is at war, or during the existence of the national emergency proclaimed by the President on May 27, 1941 [citing 6 F. R. 2617], or as to aliens, whenever there exists a state of war between or among two or more states, and when I find that the interests of the United States so require; and
>
> Whereas, the national emergency proclaimed by me on May 27, 1941, is still existing; and
>
> Whereas, there unhappily exists a state of war between or among two or more states * * *; and
>
> Whereas, the exigencies of the present international situation and of the national defense require that restrictions and prohibitions, in addition to those otherwise provided by law, be imposed upon the departure of persons from and their entry into the United States * * *:
>
> Now, therefore, I, Franklin D. Roosevelt, President of the United States of America, * * * do hereby find and publicly proclaim and declare that the interests of the United States require that restrictions and prohibitions, in addition to those otherwise provided by law, shall be imposed

upon the departure of persons from and their entry into the United States * * *; and I make the following rules, regulations, and orders which shall remain in force and effect until otherwise ordered by me:

* * * * * *

(3) After the effective date of the rules and regulations hereinafter authorized, no alien shall enter or attempt to enter the United States unless he is in possession of a valid unexpired permit to enter issued by the Secretary of State, or by an appropriate officer designated by the Secretary of State, or is exempted from obtaining a permit to enter in accordance with the rules and regulations which the Secretary of State, with the concurrence of the Attorney General, is hereby authorized to prescribe in execution of these rules, regulations, and orders.

No alien shall be permitted to enter the United States if it appears to the satisfaction of the Secretary of State that such entry would be prejudicial to the interests of the United States as provided in the rules and regulations hereinbefore authorized to be prescribed by the Secretary of State, with the concurrence of the Attorney General.

* * * * * * *

3. Presidential Proclamation No. 2850 (14 F. R. 5173), promulgated August 17, 1949, provides in pertinent part as follows:

* * * * * *

1. The said Proclamation No. 2523 is hereby amended so that paragraph numbered (3) thereof, together with the suc-

ceeding unnumbered paragraph, shall read as follows:

(3) (a) After the effective date of the rules and regulations hereinafter authorized, no alien shall enter or attempt to enter the United States unless he is in possession of a valid unexpired permit to enter issued by the Secretary of State, or by an appropriate officer designated by the Secretary of State, or is exempted from obtaining a permit to enter, in accordance with rules and regulations which the Secretary of State, with the concurrence of the Attorney General, is hereby authorized to prescribe.

(b) No permit to enter shall be issued to an alien if it appears to the satisfaction of the issuing officer, or the Secretary of State, that the alien's entry would be prejudicial to the interests of the United States within the meaning of the rules and regulations hereinbefore authorized to be prescribed by the Secretary of State with the concurrence of the Attorney General.

(c) Notwithstanding the provisions of the foregoing paragraphs (a) and (b), no alien applying for admission, even with a valid permit to enter, shall enter or be permitted to enter the United States if it appears to the satisfaction of the Attorney General that such entry would be prejudicial to the interests of the United States.

2. All existing regulations promulgated under or pursuant to the said Proclamation No. 2523 are hereby ratified and confirmed

and shall be construed to have the same effect as if included in such proclamation * * *.

* * * * *

4. Pursuant to the authority conferred by Presidential Proclamation No. 2523, the Secretary of State, with the concurrence of the Attorney General, issued regulations (6 F. R. 5911–5918), which were from time to time amended and revised (10 F. R. 5889–5893; 10 F. R. 8993–8996, 8997–9002; 10 F. R. 15332, 15333–15335) and eventually codified, on July 30, 1947, as Part 175 of Title 8 of the Code of Federal Regulations (12 F. R. 5065, 5135–5142). These regulations provide in pertinent part (8 C. F. R. [1949 ed.], Part 175):

Part 175—Control of Persons Entering And Leaving The United States Pursuant To The Act of May 22, 1918, As Amended

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ALIENS ENTERING

§ 175.52 *Refusal of permission to enter.* (a) No permit to enter shall be issued to any alien if the permit-issuing authority has reason to believe that the entry of the alien would be prejudicial to the interests of the United States.

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§ 175.53 *Classes of aliens whose entry is deemed to be prejudicial to the public interest.* The entry of an alien who is within one of the following categories shall be deemed to be prejudicial to the interests of the United States for the purposes of §§ 175.41 to 175.62, inclusive:

(a) Any alien who belongs to one of the classes specified in the act of October 16, 1918, as amended [anarchists, opposers of organized government, advocates of violent overthrow of the United States Government, etc.]. (* * * 8 U. S. C. 137).

(b) Any alien who is a member of, affiliated with, or may be active in the United States in connection with or on behalf of, a political organization associated with or carrying out policies of any foreign government opposed to the measures adopted by the Government of the United States in the public interest, or in the interest of national defense, or in the interest of the common defense of the countries of the Western Hemisphere, or in the prosecution of the war.

(c) Any alien in possession of, or seeking to procure, unauthorized secret information concerning the plans, preparations, equipment, or establishments for the national defense of, or the prosecution of the war by, the United States.

(d) Any alien engaged in activities designed to obstruct * * * the effectiveness of the measures adopted by the Government of the United States for the defense of the United States or for the defense of any other country, or the prosecution of the war.

(e) Any alien engaged in activities designed to obstruct * * * the effectiveness of any plans made or steps taken by any country of the Western Hemisphere in the interest of the common defense of the countries of such Hemisphere.

(f) Any alien engaged in organizing, teaching, advocating, or directing any re-

bellion, insurrection, or violent uprising against the United States.

(g) Any alien engaged in a plot or plan to destroy materials, or sources thereof, vital to the defense of, or the prosecution of the war by, the United States, or to the effectiveness of the measures adopted by the United States for the defense of any other country.

(h) Any alien whose admission would endanger the public safety, as provided in any Executive order issued in pursuance of the act of Congress approved June 20, 1941 (* * * 55 Stat. 252 * * *).

(i) Any alien enemy [with specified exceptions].

(j) Any alien found to be, or charged with being, a war criminal * * * or an[y] alien who has been guilty of * * * conduct contrary to civilization and human decency on behalf of the Axis countries during the present World War.

(k) Any alien who is not within one or more of the classes defined in paragraphs (a) to (j), inclusive, but in whose case circumstances of a similar character may be found to exist, which render the alien's admission prejudicial to the interests of the United States, which it was the purpose of the act of June 21, 1941 (55 Stat. 252 * * *) to safeguard.

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§ 175.57 *Entry not permitted in special cases.* (a) Any alien, even though in possession of a permit to enter, or exempted under §§ 175.41 to 175.62, inclusive, from obtaining a permit to enter, may be excluded temporarily if at the time he applies for admission at a port of entry it

appears that he is or may be excludable under one of the categories set forth in § 175.53. The official excluding the alien shall immediately report the facts to the head of his department, who will communicate such report to the Secretary of State. Any alien so temporarily excluded by an official of the Department of Justice shall not be admitted and shall be excluded and deported unless the Attorney General, after consultation with the Secretary of State, is satisfied that the admission of the alien would not be prejudicial to the interests of the United States. Any alien so temporarily excluded by any other official shall not be admitted and shall be excluded and deported unless the Secretary of State is satisfied that the admission of the alien would not be prejudicial to the interests of the United States.

(b) In the case of an alien temporarily excluded by an official of the Department of Justice on the ground that he is, or may be excludable under one or more of the categories set forth in § 175.53, no hearing by a board of special inquiry * * * shall be held until after the case is reported to the Attorney General and such a hearing is directed by the Attorney General or his representative. In any special case the alien may be denied a hearing before a board of special inquiry and an appeal from the decision of that board if the Attorney General determines that he is excludable under one of the categories set forth in § 175.53 on the basis of information of a confidential nature, the disclosure of which would be prejudicial to the public interest.

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5. Section 15 of the Immigration Act of 1917, 39 Stat. 885, as amended, 8 U. S. C. 151, provides:

> That upon the arrival at a port of the United States of any vessel bringing aliens it shall be the duty of the proper immigration officials to go or to send competent assistants to the vessel and there inspect all such aliens or said immigration officials may order a temporary removal of such aliens for examination at a designated time and place, but such temporary removal shall not be considered a landing, nor shall it relieve vessels, the transportation lines, masters, agents, owners, or consignees of the vessel upon which said aliens are brought to any port of the United States from any of the obligations which, in case such aliens remain on board, would under the provisions of this Act bind the said vessels, transportation lines, masters, agents, owners, or consignees: *Provided,* That where removal is made to premises owned or controlled by the United States, said vessels, transportation lines, masters, agents, owners, or consignees, and each of them, shall, so long as detention there lasts, be relieved of responsibility for the safekeeping of such aliens. Whenever a temporary removal of aliens is made the vessels or transportation lines which brought them and the masters, owners, agents, and consignees of the vessel upon which they arrive shall pay all expenses of such removal and all expenses arising during subsequent detention, pending decision on the 'aliens' eligibility to enter the United States and until they are either allowed to land or returned to the care of the line or to the vessel which brought them, such expenses

to include those of maintenance, medical treatment in hospital or elsewhere, burial in the event of death, and transfer to the vessel in the event of deportation, * * *

6. Section 18 of the Immigration Act of 1917, 39 Stat. 887–889, as amended, 8 U. S. C. 154, provides:

> That all aliens brought to this country in violation of law shall be immediately sent back, in accommodations of the same class in which they arrived, to the country whence they respectively came, on the vessels bringing them, unless in the opinion of the Attorney General immediate deportation is not practicable or proper. The cost of their maintenance while on land, as well as the expense of the return of such aliens, shall be borne by the owner or owners of the vessels on which they respectively came, except that detention expenses and expenses incident to detention, shall not be assessed against the owner or owners of the vessels on which they respectively came when the aliens are in possession of unexpired visas issued by the United States consuls within sixty days of the aliens' foreign embarkation if the sole cause of exclusion is one arising under section 13 (a) (1) or (3) of the Immigration Act of 1924 (43 Stat. 161–162; 50 Stat. 165; 46 Stat. 581; 8 U. S. C. 213 (a)–213 (f)). That it shall be unlawful for any master, purser, person in charge, agent, owner, or consignee of any such vessel to refuse to receive back on board thereof, or on board of any other vessel owned or operated by the same interests, such aliens; or to fail to detain them thereon; or to refuse or fail

to return them in the manner aforesaid to the foreign port from which they came; or to fail to pay the cost of their maintenance while on land as required by this section or section 15 of this Act; or to make any charge for the return of any such alien, or to take any security for the payment of such charge; or to take any consideration to be returned in case the alien is landed; or knowingly to bring to the United States any alien excluded or arrested and deported under any provision of law until such time as such alien may be lawfully entitled to reapply for admission to the United States; and if it shall appear to the satisfaction of the Attorney General that such master, purser, person in charge, agent, owner, or consignee has violated any of the foregoing provisions, or any of the provisions of section fifteen hereof, such master, purser, person in charge, agent, owner, or consignee shall pay to the collector of customs of the district in which the port of arrival is located, or in which any vessel of the line may be found, the sum of $300 for each and every violation of any provision of said sections; and no vessel shall have clearance from any port of the United States while any such fine is unpaid, nor shall such fine be remitted or refunded: *Provided*, That clearance may be granted prior to the determination of such question upon the deposit with the collector of customs of a sum sufficient to cover such fine. If the vessel by which any alien ordered deported came has left the United States and it is impracticable for any reason to deport the alien within a reasonable time by another vessel owned by the same interests, the cost of deportation may be paid by the Govern-

ment and recovered by civil suit from any agent, owner, or consignee of the vessel: *Provided further,* That the Commissioner of Immigration and Naturalization with the approval of the Attorney General, may suspend, upon conditions to be prescribed by the Commissioner of Immigration and Naturalization, the deportation of any aliens found to have come in violation of any provision of this Act if, in his judgment, the testimony of such alien is necessary on behalf of the United States Government in the prosecution of offenders against any provision of this Act or other laws of the United States; and the cost of maintenance of any person so detained resulting from such suspension of deportation, and a witness fee in the sum of $1 per day for each day such person is so detained, may be paid from the appropriation for the enforcement of this Act, or such alien may be released under bond, in the penalty of not less than $500, with security approved by the Attorney General, conditioned that such alien shall be produced when required as a witness and for deportation. No alien certified, as provided in section sixteen of this Act, to be suffering from tuberculosis in any form, or from a loathsome or dangerous contagious disease other than one of quarantinable nature, shall be permitted to land for medical treatment thereof in any hospital in the United States, unless the Attorney General is satisfied that to refuse treatment would be inhumane or cause unusual hardship or suffering, in which case the alien shall be treated in the hospital under the supervision of the immigration officials at the expense of the vessel transporting him: *Provided further,* That

upon the certificate of an examining medical officer to the effect that the health or safety of an insane alien would be unduly imperiled by immediate deportation, such alien may, at the expense of the appropriation for the enforcement of this Act, be held for treatment until such time as such alien may, in the opinion of such medical officer, be safely deported: *Provided further,* That upon the certificate of an examining medical officer to the effect that a rejected alien is helpless from sickness, mental or physical disability, or infancy, if such alien is accompanied by another alien whose protection or guardianship is required by such rejected alien, such accompanying alien may also be excluded, and the master, agent, owner, or consignee of the vessel in which such alien and accompanying alien are brought shall be required to return said alien and accompanying alien in the same manner as vessels are required to return other rejected aliens.

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